IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1151 OF 2004

Haldyn Glass Ltd. ...Petitioners

v/s

Mr Ishwar D. Bangera and anr. ...Respondents

WITH

WRIT PETITION NO.1152 OF 2004

Haldyn Glass Ltd. ...Petitioners

v/s

Mr Perumal Velapandy and anr. ...Respondents

WITH

WRIT PETITION NO.1535 OF 2004

Haldyn Glass Ltd. ...Petitioners

v/s

Mr S.I. Murugan and anr. ...Respondents

Mr V.P. Vaidya for Petitioners.

Mr R.D. Bhat for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 1ST AUGUST 2006.

P.C. :-

1. All these petitions are filed by the same employer challenging the award made by the Labour Court. The facts that are relevant and material are that the respondents in all these petitions were working with the petitioners. A departmental enquiry was initiated against them. The principal charge against all the three employees was that on two days, i.e. 17th September 1991 and 18th September 1991, during working hours, they left their place of work and they were moving from employee to employee asking the employees to sign some document and they were giving threats. In the departmental enquiry, the charges were held to have been proved and all the three employees were removed from service. Under the Industrial Disputes Act, three references were made to the Labour Court in relation to the removal of all the three employees. The Labour Court, by award, held that the departmental enquiry held is not fair and valid. Therefore, the Labour Court

permitted the parties to lead fresh evidence before the Labour Court. Accordingly, parties led evidence before the Labour Court. The Labour Court, after considering the evidence, found that though the misconduct was proved against all the three employees the punishment of removal is disproportionate to the guilt and granted reinstatement in service to all the three workmen, however, withheld 75 % of their back wages and made an order of releasing 25 % of the back wages. The awards made in all the three references are similar, therefore, all the three petitions were heard together and are being disposed off by a common order.

2. The learned counsel appearing for petitioners states that the departmental enquiry was not proper and fair, the Labour Court could have recorded its finding on the question whether the charges levelled were proved or not only on the evidence that was led by the parties before the Labour Court and the Labour Court could not have referred to and relied on the evidence that was led in the departmental enquiry. The learned counsel further submits that the only reason that has been given by the Labour Court for holding that the punishment of removal is disproportionate is that though threats were given by the employees, there was no resultant violence and that because of misconduct, there is no monetary loss caused to the employer. I have heard learned

counsel appearing for the employees also. Perusal of the award shows that there is some substance in the complaint made by the learned counsel appearing for the employer that the Labour Court should not have relied on the evidence that was led in the departmental enquiry once having found that the enquiry was not fair and proper. However, in my opinion, if the evidence that was led in the departmental enquiry is considered, then also the charges are proved. In any case, after considering the evidence in the departmental enquiry, the Labour Court has recorded a finding that the misconduct is proved. Therefore, the ultimate finding recorded by the Labour Court after considering the evidence led in the departmental enquiry is in favour of the employer. Therefore, on that count, the employer cannot make any complaint against the award. The Labour Court has held that the punishment of removal is disproportionate. It was submitted on behalf of the petitioners that if a workman is proved to have not found at the work place during working hours and who is found to have been giving threats to employees, if reinstated in service, it will amount to encouraging indiscipline amongst the employees. No doubt, the argument has considerable substance, but this argument has lost its importance and decisive quality because of the subsequent development. It is clear now that the factory of the petitioner - employer is closed and

therefore, there is no question of the employees getting back their employment now. Therefore, it is a question of only making payment to the employees. In my opinion, therefore, it is not a case where this Court in its extraordinary jurisdiction should interfere with the discretion exercised by the Labour Court after giving order. In my opinion, no exception can be taken to the finding recorded by the Labour Court that the misconduct is proved against the employees, the punishment of removal was excessive and was disproportionate. On two days, the employees were found to be moving amongst the employees, seeking signatures of the employees and giving them threats for getting the signatures. There is no evidence on record to indicate that the three employees who are supposed to have been given threats were in a position to influencing or were in a position to give threats. In my opinion, it is a matter of satisfaction of the Labour Court as to how much punishment can be said to be adequate for the proved misconduct. Taking overall view of the matter therefore, especially considering the subsequent event of closure of the factory, in my opinion, it would not be appropriate to interfere with the award which is impugned in these petitions. In the result therefore, petitions fail, rule is discharged with no order as to costs.

3. At the request of the learned counsel appearing for employees, the respondent - employees are permitted to withdraw the amounts which have been deposited by he petitioner - employer to the credit of these petitions. Credit for the amounts withdrawn by the employees pursuant to this order shall be given while recovering amounts pursuant to the awards. The learned counsel appearing for petitioner - employer states that the balance amount of wages including back wages awarded by the Labour Court and closure compensation can be paid to the respondent - employees within a period of twelve weeks from today. Statement is accepted. As a result of dismissal of the writ petitions, the interim order made by this Court staying operation of the impugned awards, stands vacated. The petitioners are directed to make payment of wages till the date of closure as also back wages in accordance with the impugned order, as also closure compensation to the respondent - employees within a period of twelve weeks from today. It is clarified that the payment can be made by the employer by sending cheques in favour of the concerned employees at the address of the learned counsel appearing for respondents.

. Parties to act on the copy of this order duly authenticated by the Associate / Private Secretary as true copy.

. Certified copy expedited.